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FM AMEMBASSY KUWAIT
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RHEHNSC/NSC WASHDC PRIORITY

C O N F I D E N T I A L KUWAIT 000109

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E.O. 12958: DECL: 02/03/2019
TAGS: [PREL](#) [EAIR](#) [ECON](#) [IZ](#) [KU](#)
SUBJECT: GOK FINESSING OF KUWAIT AIRWAYS CASE SETTLEMENT
OPEN TO DEBATE

REF: A. 08 KUWAIT 976
[1](#)B. KUWAIT 105

Classified By: Economic Counselor Oliver John for reasons 1.4(b) and (d).

[1](#)1. (C) Summary: Parliamentary inquiries debate about the terms of a possible settlement between Kuwait Airways Corporation(KAC) and Iraq have highlighted a major disconnect between the GOK and KAC. GOK MFA Undersecretary Jarallah affirmed that the Amir had intended to resolve the issue during side talks between the Kuwaiti and Iraqi delegations at the recent Arab Economic Summit in Kuwait(ref B). KAC officials, however, insist that no final deal has been negotiated and that the effect of a \$300 million payment mentioned in press stories would only be to terminate a KAC collection lawsuit in Canada which had frozen GOI assets deposited for the purchase of ten Bombardier aircraft. The GOK has reiterated to the GOI through its ambassador in Baghdad that the GOK alone has the official word on the matter. Although Jarallah has confided that the GOK would prefer to keep the National Assembly out of what it wishes to treat as a government to government deal, we understand that the Kuwait Airways Privatization law and a separate statute governing state actions substantially affecting public monies and assets both require approval of a settlement by the National Assembly. Jarallah also suggested that public statements on the matter, by the GOI or KAC, undermine the prospects for reaching a final settlement. End summary.

[1](#)2. (C) Kuwait Airways Company(KAC) Legal Advisor Sattar Mohammed Setareh told Econoff on January 29 that no settlement had been reached in discussions between the Kuwaiti and Iraqi delegations that occurred on the side of the Arab Economic Summit held in Kuwait on Jan. 19-20. Setareh said news stories quoting GOI spokesman Ali Al-Dabbagh saying the outstanding \$1.3 billion damage award in favor of KAC and against Iraqi Airways and the Government of Iraq had been settled for \$300 million were inaccurate.

[1](#)3. (C) Setareh acknowledged that the GOI FM had raised the issue of the damages award with the Kuwaiti Amir during the Summit. However, Setareh said the FM had focused on the GOI's desire to obtain the ten Bombardier aircraft it had ordered from the Canadian manufacturer and whose delivery had been blocked by a KAC lawsuit seeking GOI funds deposited with Bombardier in satisfaction of KAC's \$1.3 billion judgment from a London court. Setareh said that, in response to the FM's plea for the release of the Bombardier aircraft, the Amir had offered to prevail on KAC to drop its collection efforts in Canada and allow delivery of the remaining nine aircraft, if the GOI would make a \$300 million payment toward the \$1.3 billion judgment. Setareh said the KAC's CEO, Hamad Latif Al-Falah, had confirmed this understanding with the

Amir immediately following the discussions with the GOI FM. According to Setareh, the Amir told Al-Falah that he did not intend to indicate that the entire KAC damages award would be settled by this payment nor that KAC would cease efforts to be paid the remainder of the \$1.3 billion damages award. Setareh said that two more Bombardier aircraft are ready for delivery according to KAC's Canadian attorneys (Note: KAC CEO Falah was quoted in a January 29 press story also saying that the \$300 million was not a final settlement but only aimed at allowing delivery of nine Bombardier aircraft still on order for the GOI. End note).

14. (C) In a February 2 meeting with Ambassador(ref B), GOK Ministry of Foreign Affairs Undersecretary Khalid Al-Jarallah acknowledged the discrepant stories but confirmed that the GOK had intended for the case to be fully settled by the \$300 million payment from the GOI: the Amir had instructed GOK officials to "fix it" and believed the technical people had reached a final agreement. Jarallah acknowledged Iraqi confusion over the outcome of these talks but told Kuwait's Ambassador in Iraq to inform the GOI that what they had heard from the GOK was the official answer, i.e. \$300 million was intended to settle the entire matter. Jarallah suggested that public statements out of Baghdad only served to invite parliamentary intervention, given its contentious relationship with the GOK government, which often involves claims of GOK mismanagement of the public purse. Jarallah stressed that the GOK had hoped to avoid Parliament's involvement in this decision. (Note: The notion that Parliament could be excluded from a settlement that wrote off \$1 billion of the damage award contradicts earlier statements by KAC's Legal Advisor who stated that any write-down of the \$1.3 billion award would have to be approved by Parliament

under the terms of the 2008 Kuwait Airways Privatization Law which prohibits any entity from diminishing KAC's "rights" prior to completion of the privatization without the approval of the National Assembly. Setareh said legal judgments and claims qualify as property rights. Setareh said that National Assembly approval would also be required under the Protection of Public Funds law of 1993 which requires NA approval for state actions which substantially affect public monies and assets. End note.)

15. (C) Setareh said that as far as KAC was concerned, efforts to collect the \$1.3 billion award would continue; KAC anticipated a decision from the Canadian court system in the very near future and, if successful, KAC would seek the transfer to KAC of any funds deposited by the GOI with Bombardier.

16. (C) Setareh concluded the meeting by noting that GOI complaints in October 2008 to the effect that the planes which KAC had blocked the delivery of were intended for Iraq's President and Prime Minister were false. He produced a lease agreement that he said had been submitted by the GOI in the Canadian case, which specified that the GOI Ministry of Finance would lease all 10 Bombardier aircraft to Iraqi Airways for the purpose of "transport of passengers, cargo and goods." He characterized this as just one of many instances of Iraqi deceit in the court proceeding in Canada.

17. (C) Comment: The GOK has long wished to resolve this festering dispute and reportedly earlier agreed to settle the matter for compensation of \$500 million, reduced from \$1.3 billion(ref A). That also proved to be too difficult for the Iraqis. As post has noted previously, it may well be that the Amir wanted to settle the matter quickly and quietly to reward the Iraqis for their helpful Summit participation and tried to finesse the issue by allowing the release of the seized Iraqi aircraft in return for a \$300 million payment. Clearly there continues to be a major disconnect on the Kuwaiti side between KAC and the political leadership. The National Assembly may be in a position to foil GOK efforts to put this matter to rest. Assuming the KAC Legal Advisor's reading of the Privatization law and the Protection of Public Funds law is accurate, the GOK would first have to overcome almost certain parliamentary opposition to a \$1 billion award

write-down at a time of economic downturn for many Kuwaitis. The GOK has been reluctant to take unpopular stands in the face of parliamentary opposition, even in less controversial cases. Our sense is that the Amir hoped to game this as he has the question of Iraqi debt, now estimated at \$15-17 billion, by saying nothing, making no effort to collect, and hoping the Iraqis would say nothing publicly to arouse a parliamentary response here.

Comment continued

18. (C) The Iraqis appear to some Kuwaiti observers to be gaming the system as well. The two most recent settlement negotiations have occurred just as some of the Iraqi-contracted Bombardier aircraft became available for delivery, the first in September 2008 and now as the second and third aircraft have come off the assembly line. The GOI arranged delivery of the first aircraft during a brief lifting of the asset freeze in the legal proceeding in Canada in September, between the conclusion of an initial procedural hearing in which the GOI prevailed and the filing of an appeal by the GOK. Settlement discussions then halted until the current GOK-GOI exchanges. Should the GOK leadership fail politically to pull off the \$300 million settlement the GOI may have to rethink its strategy for satisfying the damage award. End comment.

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